



**THE ATTORNEY GENERAL
OF TEXAS**

October 18, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Wanda F. Stewart
Executive Director
Texas Board of Examiners in the
Fitting and Dispensing of Hearing Aids
4800 N. Lamar, Suite 150
Austin, Texas 78756

LO-89-87

Dear Ms. Stewart:

You ask whether state funds appropriated to the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids may be used to purchase service plaques for the members of the board. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is a state agency created pursuant to article 4566-1.02, V.T.C.S. The board consists of nine members appointed by the governor with the advice and consent of the senate. Id. Board members serve staggered six-year terms.

Board members are entitled to receive only the compensation authorized by law. Article 4566-1.12(d) and (e) provides for compensation as follows:

(d) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

(e) The number of days for which compensation may be paid to members of the Board

shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

You suggest that article V, section 11, of the current Appropriations Act authorizes the expenditure of state funds for the purpose you propose. That provision authorizes state agencies to present to their employees, as additional compensation, awards, certificates, plaques, and similar items that do not exceed an expenditure of \$75 per employee. This office addressed a question identical to your question in Letter Opinion 88-123 (1988), and the conclusion of that opinion is applicable to your inquiry. In the earlier opinion we held that officers are not employees within the meaning of article V, section 11, of the Appropriations Act and that the section does not authorize the purchase of plaques for officers who serve without compensation.

Your agency's board members are not employees; they are officers for a set term, are subject to removal, and are charged with implementing and aiding in the enforcement of the provisions of article 4566-1.01 et seq. The limits on the compensation to which the board members are entitled is quoted above. Therefore, it is our opinion that the agency is without authority to spend state funds to purchase plaques for board members.

You state that the board members receive state group insurance coverage and argue that that entitlement suggests that the members should also be eligible to receive the plaques. We disagree. The authorization for state paid insurance coverage is found in the Texas Employees Uniform Group Insurance Benefits Act, article 3.50-2 of the Insurance Code. In that act, "employee" is defined to include certain officers. Section 3(a)(5)(A)(iv) of the act expressly includes within the act's definition of "employee" any officer of the state

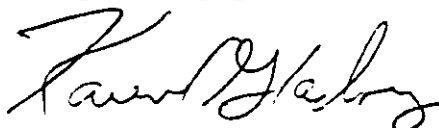
who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

That the legislature has expressly included officers within the group of persons entitled to receive insurance benefits

does not mean that the legislature considers officers to be employees for all statutory purposes.

Indeed, the expansion of the standard definition of employee in the Insurance Code, in our opinion, underscores the legislature's awareness that employees and officers are treated as different classes in various statutes. We are aware of no statutory authority for the expenditure of state funds for the purpose you propose.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

APPROVED: Rick Gilpin, Chairman
Opinion Committee

KCG/er

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